

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A)
SHORELINE SUBSTANTIAL DEVELOPMENT)
PERMIT ISSUED BY GRAYS HARBOR)
COUNTY TO GRAYS HARBOR COUNTY,)
DEPARTMENT OF PUBLIC WORKS,)
KENNETH D. MILLER,)
Appellant,)
v)
GRAYS HARBOR COUNTY,)
Respondent.)

SHB No. 80-11

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit to construct a new beach access, came on for hearing before the Shorelines Hearings Board, Nat W. Washington, Chairman, David Akana, Member, Rodney Kerslake, Member and Gerald Probst, Member, convened at Lacey, Washington, on June 27, and July 3, 1980. Hearing Examiner William A. Harrison presided.

Appellant, Kenneth D. Miller, was present and represented

1 himself. Respondent, Grays Harbor County, was represented by Curtis
2 N. Janhunen, Prosecuting Attorney. Reporter Kim Otis recorded the
3 proceedings.

4 Having heard or read the testimony, having examined the exhibits,
5 having considered the contentions of the parties; and the Board having
6 served its proposed decision upon the parties herein, and having
7 received exceptions thereto; and the Board having considered the
8 exceptions, and having granted the exceptions in part and denied said
9 exceptions in part, the Board now makes these

10 FINDINGS OF FACT

11 I

12 This matter arises in the North Beach area of Grays Harbor County,
13 north of Ocean Shores. There presently exists a short county road
14 connecting the Coast Highway (SR 109) and the wide Pacific beach at a
15 point known as Ocean Grove (hereafter "present access"). Motorists
16 can and do use the access to travel from the Highway onto the beach
17 and thereafter drive upon the beach.

18 On February 6, 1980, the Grays Harbor County Department of Public
19 Works applied to the Grays Harbor County Planning Department for a
20 shoreline substantial development permit to construct a new beach
21 access. The proposed access would consist of a surfaced road some 20
22 feet wide and some 325 feet in length connecting the Coast Highway and
23 the Pacific beach at a point known as Roosevelt Beach (hereafter
24 "proposed access"). The proposed access would be within a dedicated
25 county right of way within a residential plat (First Addition,

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1 Roosevelt Beach) established in the early part of this century but
2 never developed. The County owned, until recently, most of the lots
3 in the vicinity of the proposed access and has recently sold many of
4 them, including 4 lots adjacent to the proposed access which
5 appellant, Miller, purchased.

6 The County intended that the proposed access be built in addition
7 to the present access at Ocean Grove.

8 II

9 On February 25, 1980, the County completed an Environmental
10 Checklist for the purpose of determining whether the proposal would
11 have a significant impact upon the environment and thus require an
12 environmental impact statement (EIS). On April 11, 1980, the County
13 issued a declaration that the proposal had been determined to have a
14 non-significant adverse impact upon the environment and that an EIS
15 would not be required.

16 III

17 On the same date, April 11, 1980, the County approved a shoreline
18 substantial development permit for the proposed access. By letter of
19 April 29, 1980, (exhibit R-4) the State Department of Transportation
20 (DOT) notified the County that as a condition to joining the proposed
21 access to the Coast Highway, the present access at Ocean Grove would
22 need to be closed. This condition arose from DOT's concern that
23 county road intersections with the Coast Highway be limited. The
24 condition did not represent a conclusion by DOT that the present
25 access at Ocean Grove is unsafe.

1 During a good clam tide of spring or summer, there can be, on the
2 average, 1,162 cars on the 8 mile stretch of beach between the Moclips
3 and Copalis Rivers which bracket the present and proposed access.
4 This is a peak number and involves usage of 4 other accesses aside
5 from the present one. During most of the year there are few vehicles
6 on the beach. Construction of the proposed access may be expected to
7 re-route the share of cars now using the present access without
8 increasing the number of cars driving on the beach.

9 From past experience, tourists using the proposed access would
10 bring a demand for sanitary and solid waste facilities. Lacking these
11 facilities, there would be a problem of human and other wastes
12 accumulation over the access. There was no mention of the need for
13 such facilities in the proposed development. In view of this, the
14 Environmental Checklist was incorrectly completed where it declared
15 that the proposal will not result in need for solid waste disposal
16 (No. 16) and would not result in the creation of a health hazard (No.
17 17). Respondent, County, stipulated at hearing that it would accede
18 to requirements for public toilets and litter receptacles at the
19 proposed access. We take this stipulation as a modification of the
20 proposal (WAC 197-10-350(1) or mitigating measures (WAC 197-10-355(3))
21 which would modify the proposal.

22 Where a motorist is situated upon a cross-road seeking to enter a
23 highway, the distance over which on-coming highway traffic is visible
24 is known as sight distance. Sight distance is slightly longer to the
25 north at the present access than the proposed access and vice-versa as
26

1 to sight distance to the south. Both accesses meet DOT standards for
2 sight distance.

3 V

4 There is presently an established, broad foot path over the
5 approximate site of the proposed access. Construction of the proposed
6 access might stimulate building in the plat of which it is a part.
7 Although the plat appears to be for beach homes, the evidence does not
8 disclose a probable proposal to construct either that type of
9 structure or any other, as a consequence of the proposed access to the
10 beach or otherwise.

11 VI

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board comes to the following

15 CONCLUSIONS OF LAW

16 I

17 Declaration of Non-Significance. The State Environmental Policy
18 Act (SEPA) requires a detailed statement (EIS) whenever a government
19 agency makes a proposal for major action significantly affecting the
20 quality of the environment. RCW 43.21C.030(2)(c).

21 It is therefore necessary to determine 1) the scope of the
22 proposal and its direct and indirect impacts and 2) assess its
23 adverse impacts to declare whether the action will have a significant
24 effect.

25 1) Appellant urges that the County should have defined the scope

1 of the proposal to include not only the access road but possible
2 increased development adjacent to it. Under rules implementing SEPA,
3 the total proposal is the proposed action together with proposed
4 activity functionally related to it. WAC 197-10-060(2). Functionally
5 related means that a present proposal facilitates or is a necessary
6 prerequisite to future activities WAC 197-10-060(2)(b). While the
7 proposed access may "facilitate" future activity there has been no
8 showing that any particular activity is proposed beyond that of the
9 proposed access. The scope of the proposal therefore consists of the
10 proposed access only. Under WAC 197-10-160(3), reasonably anticipated
11 indirect impacts of the proposal must be considered within a threshold
12 determination. These include impacts resulting from growth induced by
13 the proposal. The evidence before us does not indicate what specific
14 growth, if any, will be induced by the proposed access. Remote and
15 speculating growth need not be considered in this threshold
16 determination. See Cheney v. Mountlake Terrace, 87 Wn.2d 338, 552
17 P.2d 184 (1976).

18 2) The Environmental Checklist is the vehicle prescribed by SEPA
19 rule, WAC 197-10-310, to disclose the individual impacts of a proposed
20 action. From this an ultimate conclusion must be drawn by the County
21 as to whether the proposal would significantly affect the quality of
22 the environment. We must then review the County's conclusion, in this
23 case a declaration of non-significance, according it substantial
24 weight. RCW 43.21C.090. We have found that there were items on the
25 Environmental Checklist which were incorrectly completed. However, we

1 are unable to conclude even when these items are corrected, that the
2 County's declaration of non-significance is clearly erroneous in view
3 of the entire record before us and the public policy contained in
4 SEPA. We therefore uphold the County's declaration of
5 non-significance. See Norway Hill Preserv. & Protec. Ass'n. v. King
6 County, 87 Wn.2d 267, 552 P.2d 674 (1976).

7 II

8 Site Description and Statement of Property Owners. Appellant
9 urges that the permit and application contain a defective legal
10 description of the site. Particularly, he points to the reference to
11 "Lot 4" of Section 32. Appellant took that to mean plat lot 4 when in
12 fact it meant government lot 4. Despite this minor ambiguity, we
conclude that the legal description of the site was adequate to meet
14 the requirement of description to the nearest 1/4 section. WAC
15 173-14-110 and -120.

16 Appellant further contends that the application was defective in
17 failing to disclose the name of a property owner, other than the
18 County, over whose land the end of the access road would pass. At the
19 time of the application this small parcel had been sold by the County
20 to the owner, one Andrews, who afterwards sold it back to accommodate
21 a straight right of way which would not impair a nearby slope as might
22 otherwise be the case. These circumstances do not create a fatal
23 defect in the County's application.

24 III

25 Conservancy. The Conservancy designation starts at the three mile

1 limit and runs east to the line of vegetation. The rest of the upland
2 is designated as a Rural environment. Grays Harbor County Shoreline
3 Master Program (hereafter "Master Program") Correction No. 1, page 31.
4 Chapter 4, Paragraph 1. All of the proposed access would be within
5 the Rural environment excepting possibly some 5 feet in which the
6 access road tapers onto the beach. Appellant contests this entry into
7 the Conservancy environment. Since the Master Program, Chapter 22,
8 page 9, lists "lesser streets" and "public access area and devices" as
9 permitted uses in a Conservancy environment we see nothing improper in
10 this minor intrusion.

11 IV

12 Safety. Appellant contends that the proposed access will be no
13 safer for motorists than the present access. In reviewing the
14 shoreline permit before us, however, we are not called upon to make
15 that determination. The only Master Program criteria raised by
16 appellant which relates to safety provides that "public access should
17 be as safe as possible". Public Access Goal, p. 2. Appellant has not
18 proven that the proposed access is not safe as possible.

19 V

20 Siting. Appellant cites Master Program Chapter 5, paragraph 9,
21 page 33 and Chapter 2, paragraph 2(b)(2), p. 24 for the proposition
22 that the present access should be improved rather than a new access
23 constructed. These provisions state, respectively:

24 "Where property has been previously impacted or
25 disturbed by man, and part not so disturbed, then
26 where reasonable, new development shall occur on the
27 previously disturbed section of property."

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"Where intensive development already occurs, upgrade and redevelop those areas, before extending high intensity uses to low intensity use or undeveloped areas." (emphasis added)

The present access is not an intensive development nor has it substantially disturbed its site. Likewise, the proposed access is presently an established and broad foot trail. Were the proposed access constructed and the present access closed to vehicles, it is probable that each site would assume the present character of the other. We conclude that this level of development, under these circumstances, is not prohibited by the siting provisions set forth above.

VI

Walkways and Upland Parking. Appellant cites Master Program, Chapter 2, Recreation, paragraph 4(3), page 12, and Chapter 2, paragraph 2(3)(1), page 24, for the proposition that the proposed access should be limited to a walkway with upland parking. These provisions state, respectively,

To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods. Motor vehicle traffic on dunes and fragile shoreline resources should be prohibited. (emphasis added)

Increase public access to publicly owned areas of the shorelines. This can be accomplished by:

1) Giving priority to the developing paths (sic) and trails to shoreline areas, linear access along the shorelines and to developing upland parking.

1 The ocean beach adjacent to the present and proposed access is a
2 public highway. RCW 79.16.170. In view of this, we cannot conclude
3 that walkways to the beach are the sole or exclusive means for public
4 access to the beach under the Master Program. This interpretation is
5 supported by the language emphasized above allowing access by walkways
6 or other methods and prohibiting vehicles on fragile shorelines, which
7 the proposed site has not been shown to be in the record before us.

8 While the motorists using the proposed access will no doubt park
9 on the beach, such parking would probably occur to the same degree
10 whether or not the proposed access is constructed. We therefore
11 cannot conclude that the proposed access should be reviewed under the
12 Master Program provisions relating to parking.

13 VII

14 Sanitary and Solid Waste Facilities. The Master Program, Chapter
15 2, Paragraph 7(a), page 9, provides that "special care shall be taken
16 to provide convenient (solid waste) facilities for tourists."
17 Paragraph 7(c) requires a sewage system or septic tank or other
18 sanitary disposal system for all uses and activities which generate
19 liquid wastes. (There was no evidence establishing facts which would
20 require use of a sewer system or septic system). The proposed
21 development should therefore be undertaken if public toilets and a
22 litter collection system are provided and maintained.

23 VIII

24 We have carefully reviewed the other contentions of appellant and
25 find them to be without merit.

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IX

The conclusions reached above are premised upon the assumption that the proposed access is as depicted in Exhibit R-2, a project drawing, offered by the County at hearing and used as such by all parties. The permit should be amended to incorporate this drawing by reference. With such incorporation the permit provides sufficient detail to determine the consistency of the proposed substantial development permit with the Master Program. See Hayes v. Yount, 87 Wn.2d 280, 552 P. 2d 1038 (1976).

X

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

This matter is remanded to the County for issuance of a shoreline substantial development permit in the same form as previously issued; provided that, the substance of the following shall be added to the permit:

1. The proposed development shall be as depicted on the drawing marked as Exhibit R-2 which drawing shall be incorporated by reference on the face of the permit and attached thereto.

2. The permit shall be conditioned to require that public toilets and a litter collection system shall be provided and maintained during periods that bring user demand to the access.

1 DONE at Lacey, Washington, this 16th day of January, 1980.

2 SHORELINES HEARINGS BOARD

3 
4 A. M. O'MEARA, Member

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7 GERALD P. PROBST, Member

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10 RODNEY M. KERSLAKE, Member

11 
12 DAVID AKANA, Member

13
14 SEE DISSENT (attached)
15 NAT W. WASHINGTON, Chairman

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26 FINAL FINDINGS OF FACT
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1 WASHINGTON, MEMBER, DISSENTING:
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3 I am in agreement with the result of the majority decision as it
4 relates to the impact of the proposed access road on the upland,
5 including the land owned by the appellant, but I do not agree with the
6 result as it relates to the beach itself.

7 The impact of the access road on the upland, including the land
8 owned by the appellant, and on the safety factors relating to the
9 intersection of the access road with the state highway was well
10 covered at the hearing. In my opinion, however, the impact on the
11 beach itself was not adequately covered by the environmental
12 checklist, the evidence presented at the hearing or by the decision of
13 the majority. I therefore dissent.

14 I

15 My dissent addresses the following issues:

16 1. Whether construction of the proposed access road, which will
17 facilitate both parking and increased motor vehicle travel on adjacent
18 beaches, is in violation of policies set forth in the Grays Harbor
19 County Shoreline Master Program (hereinafter "Master Program") which
20 (a) favors upland parking of vehicles over beach parking, (b) favors
21 access to the beach by walkways and trails over access by roads and
22 (c) favors the maintenance of diverse recreational opportunities on
23 the beaches.

24 2. Whether Grays Harbor County acting in its capacity as the
25 proponent of the proposed development (the acting agency) and as the
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1 lead agency should have evaluated the impact of increased motor
2 vehicle traffic on existing beach oriented recreational opportunities,
3 such as hiking, beachcombing and the broad span of activities referred
4 to in the Master Program as "open beach play;" and whether the
5 environmental checklist which failed in any meaningful way to address
6 this impact was sufficiently complete to meet the requirements of ch.
7 197-10 WAC.

8 MASTER PROGRAM ISSUE

9 II

10 The maintenance of a variety of recreational opportunities to
11 satisfy a diversity of demands is a significant element of the
12 recreation policies set forth in the Master Program chapter 2 at page
13 12, section 4.(f) where it states:

14 "(f) Recreational developments should be of such
15 variety as to satisfy the diversity of demands and
16 should be compatible with environment designations."
(emphasis added.)

17 Since access to much of the beach area in the vicinity of Roosevelt
18 Beach and Ocean Grove is already available to motor vehicle oriented
19 recreation (as shown by photographs which were admitted as evidence),
20 the diverse demands of other types of recreation which may be
21 inhibited by motor vehicle traffic, might well be better served by
22 upland parking with trails and walkways to the beach.

23 Important among the recreational activities enjoyed on the firm
24 wet sands of the ocean beaches (the area also favored for vehicle
25 travel) is the many faceted activity referred to in the Master
26 Program,

27 WASHINGTON, DISSENT

1 chapter 2, page 3 under the heading of RECREATION as "open beach
2 playing."¹ It would be difficult to catalogue all of the
3 recreational pursuits under this broad category. None were mentioned
4 in the environmental checklist or the evidence presented at the
5 hearing, but obviously they are many and range across the alphabetical
6 spectrum from acrobatics and building sand castles to volley ball.

7 Most beach play activity, especially family recreation involving
8 small children, does not mix well in the very same area with motor
9 vehicle traffic. Undoubtedly this is one of the main reasons why the
10 Master Program in establishing the policy for new access to the
11 beaches on shorelines of statewide significance gave priority to
12 developing upland parking with access trails and walkways leading down
13 to the beach. This clearly defined policy set forth in the Master
14 Program at chapter 2, page 12, section 4(3) states that "To avoid
15 wasteful use of the limited supply of recreational shoreland, parking
16 should be located inland away from the immediate edge of the water and
17

18 19 1. RECREATION

20 Access to shorelines for passive and active recreation was
21 included as a consideration in the Public Access Goal. Water related
22 recreation depends on access but also represents a specific activity
23 or use of the water or the adjacent shorelines. This activity takes
24 several forms and is noted in the Economic Goals as an integrated part
25 of the regional economy.

26 Fishing, clam-digging, open beach playing, hunting, river
27 rafting and canoeing, and other outdoor sports are available and
almost all depend on a well-maintained environment and well managed
shorelines. Recreational activity also brings along with it certain
adverse impacts if not adequately controlled, i.e., over use,
vandalism, and litter. (emphasis added.)

1 recreational beaches," and that "access should be provided by walkways
2 and other methods."

3 The Master Program sets forth few prohibitions, and access to the
4 beaches for motor vehicles is not prohibited, nevertheless it clearly
5 sets forth a strong policy against establishing entirely new access
6 roads for opening up new beach areas to more parking and increased
7 traffic.

8 No provisions in the Master Program have been called to the
9 attention of the Board which indicate that additional direct motor
10 vehicle access to the ocean beaches is desirable. In none of the
11 Master Program provisions relating to enforcement of recreational
12 beach activities is recreational motor vehicle driving mentioned.
13 This probably is in recognition of the fact that it is so well
14 established on so many beach areas, that unlike many other
15 recreational beach activities, it does not need the protection
16 provided by the Master Program.

17 Much of the ocean beach area of Grays Harbor County has been
18 opened to recreational driving and many direct access roads for motor
19 vehicles have been provided. Although the Master Program makes it
20 plain that additional access should be by walkway or trail, it does
21 not suggest that existing access roads should be closed, or that motor
22 vehicles should be banned from beaches which are now open to them.
23 However, the strong Master Program emphasis on upland parking and
24 access to the beach by walkways does make it clear that it would not
25 be good policy to construct new access roads to beach areas which are

1 now protected from heavy motor vehicle traffic by creeks or other
2 natural obstructions which turn back many vehicles which would
3 otherwise enter the area. The type of vehicle most likely to be
4 turned back may well be the low slung "hot rod" type of vehicle. On
5 the otherhand the type that may well be most able to cross creeks are
6 high clearance vehicles such as campers which would probably be less
7 disruptive to open beach play and other types of beach recreation.

8 Photographs which were placed in evidence do indicate that many
9 motor vehicles are able to reach the area immediately to the north of
10 the proposed access and that some are able to reach the area to the
11 south. There also was testimony that substantial numbers of vehicles
12 reached the beaches adjacent to the proposed access road, and that
13 many vehicles were not turned back by the creeks. But the
14 environmental checklist which should provide the most reliable
15 information does clearly state that creeks to the south and north do
16 make access to this section of the beach difficult. From the
17 photographs it would appear that the beach area most difficult to
18 reach is probably south of the proposed access road. Neither the
19 checklist or the evidence aduced at the hearing indicate the degree of
20 difficulty of crossing the creeks, or whether they actually do prevent
21 substantial numbers of motor vehicles from reaching the area. It must
22 be assumed, however, that the creeks do stop a substantial number of
23 vehicles or the county would not be urging the construction of the new
24 access road.

25 Undoubtedly there are some circumstances when the unquestioned

1 need for motor vehicle access to an ocean beach might offset the
2 strong policy which makes walkways and trails the favored means of
3 gaining new access. But these circumstances should be exceptional and
4 compelling. Such high priority circumstances do not exist here. The
5 proposed access road cannot be found on the County's official list of
6 priority projects. If it were urgently needed it should be on this
7 list. The Parks and Recreation Commission conducted a study of the
8 access needs of the north beach area. Its recommendation for
9 Roosevelt Beach was for an upland parking lot and access to the beach
10 by pedestrian trail. (Exhibit R-5.) At the public hearing, no
11 members of the public appeared to support the project, although a
12 number appeared in opposition. There appears to be no pressing
13 reasons why the policy of the Master Program favoring upland parking
14 and access by walkways or trails should not be followed in
15 establishing new access to Roosevelt Beach.

16 In my view, the policy of the Master Program does favor the
17 maintenance of existing diverse recreational opportunities on ocean
18 beaches; and that when new access is needed to a beach providing these
19 opportunities the policy clearly favors upland parking of vehicles
20 over beach parking and direct access by walkways or trails rather than
21 by road. Whether this policy should be applied to this particular
22 stretch of beach was left in doubt by the failure of the County to
23 provide information as to the quality and quantity of existing
24 recreational opportunities as required by the environmental
25 checklist. A showing that the affected beaches do in fact provide

1 substantial diverse recreational opportunities would call for the
2 application of this Master Program policy.

3 CHECKLIST ISSUE

4 III

5 The proposed access road was designed for the purpose of opening
6 up new areas of the beach in conservancy environment that presently
7 are difficult for most vehicles to reach, yet the almost exclusive
8 focus of the environmental checklist was on the impact the road would
9 have on the upland in a rural environment.

10 The ocean beach area involved is one of the prime shoreline
11 recreation areas in the state, thus question (19) relating to
12 recreation is probably the most important question on the
13 environmental checklist. The question is:

14 "(19) Recreation. Will the proposal result in an impact upon the
15 quality or quantity of existing recreational opportunities? (emphasis
16 added.)

17 This question called for a "yes" answer which was given. WAC
18 197-10-310 requires that an explanation be given of all "yes" and
19 "maybe" answers.²

20
21 2. WAC 197-10-310 THRESHOLD DETERMINATION
22 PROCEDURES--ENVIRONMENTAL CHECKLIST. (1) An environmental checklist
23 substantially in the form provided in WAC 197-10-365 shall be
24 completed for any proposed major action before making the threshold
25 determination. Every "yes" and "maybe" answer on the checklist shall
be explained. Persons completing the checklist may also explain "no"
answers. Persons filling out an environmental checklist may make
reference to studies or reports which are available to the agency to
which the checklist is being submitted. (emphasis added.)

1 The "yes" answer to this crucially important question required a
2 complete and thorough explanation, yet the explanation, which was not
3 really an explanation at all, merely stated:

4 "(19) Recreation. The proposal will open up new areas of
5 the beach that are difficult for most vehicles to reach
6 presently."

7 This inadequate explanation was in a small measure supplemented by the
8 explanation of a "yes" answer to (14)(d), also relating to recreation,
9 which elicited the further information that the difficulty was ". . .
10 due to small creeks to the north and south."

11 . . .

12 The "yes" answer to this important question (19) required an
13 explanation which adequately set forth a description of the important
14 existing recreation activities being carried out on the affected beach
15 area; (i.e., the various kinds of activities generally referred to in
16 the Master Program as open beach play) together with a description of
17 the nature and extent of the expected impact of the proposed road on
18 each activity.

19 In order to properly set forth the impact the road will have on
20 the various existing recreation opportunities, a number of factors
21 should have been discussed, including:

22 1. The location and approximate size of the creeks to the north
23 and south which presently make access to the area difficult, and the
24 factors which cause each creek to inhibit motor vehicle access.

25 2. The approximate length of the stretch of beach both north and
26 south of the proposed access that will be made more accessible.

1 3. The approximate number and types of vehicles which now cross
2 the creeks and reach the area, and the types which are discouraged, or
3 prevented by the creeks from reaching the area.

4 4. Whether the area is one which now provides family recreation
5 where children can be allowed to play on the beach and be reasonably
6 free from danger caused by (a) general motor vehicle traffic or (b)
7 hot rodders."

8 5. From a clam conservation point of view, whether increased
9 traffic will have an adverse effect on the clam population due to more
10 intense clamming activity.

11 The explanation for environmental checklist question (13) (f),
12 relating to traffic circulation states that the existing access (Ocean
13 Grove) "may be closed due to the traffic hazard it creates." This
14 explanation, like many of the others, did not in fact explain
15 anything. It did not explain the nature of the traffic hazard,
16 neither did it explain what impact the closure would have on clamming
17 and other existing beach oriented recreational opportunities in the
18 Ocean Grove area. The impact of this closure or recreation should
19 also have been covered in the explanation to question (19). (It
20 should be noted that there was little evidence that the Ocean Grove
21 access could be considered a traffic hazard.)

22 By failing to explain the "yes" answers to checklist questions
23 (19), (14) (d) and (13) (f) as mandatorily required by WAC 197-10-310,
24 the County never completed the checklist. This in turn resulted in
25 the County's failure to comply with another mandatory requirement of

1 the same section which states that the checklist "shall be completed
2 before making the threshold determination."

3 WAC 197-10-360(2), in explaining the significance of the checklist
4 in the threshold determination process, states in part that, "The
5 nature of the existing environment is an important factor," yet the
6 checklist is completely silent as to existing environmental factors
7 affecting recreation activities on the long stretch of beach south of
8 the proposed new access road. Failing to provide this important
9 information constitutes a serious material omission.

10 Although it was apparent from the evidence that a number of
11 checklist questions were answered "no" which should have been answered
12 "yes" or "maybe," I believe the most serious deficiency lay in the
13 failure of the County to make any real effort to explain the "yes"
14 answers that were given. Each "yes" answer indicated a potential
15 adverse impact and required a thorough explanation. Complete answers
16 would not only have assisted the lead agency in understanding the full
17 nature of the impact, but would have been of real value to the
18 Shorelines Hearings Board during its deliberations in this matter.
19 WAC 197-10-365 which sets forth the form of the environmental
20 checklist, points out in the third paragraph that "complete answers to
21 these questions will help all agencies involved with your proposal to
22 undertake the required environmental review without unnecessary
23 delays."

24 Based on the evidence introduced at the hearing, and in particular
25 the environmental checklist, it is my view that the threshold

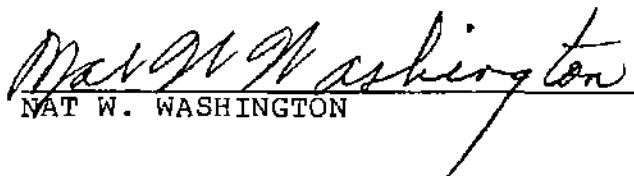
1 determination was not made in substantial compliance with chapter
2 197.10 WAC.

3 CONCLUSIONS

4 I am in agreement with the majority that the matter be remanded to
5 the County, and agree that any shoreline substantial development
6 permit which may be issued be conditioned as set forth in the order;
7 but I would go further and would remand the matter to the County with
8 the following additional instructions:

9 1. That it reconsider its determination to provide new access to
10 the beach by a motor vehicle road rather than by pedestrian trails and
11 walkways.

12 2. That the process of reconsideration encompass the making of a
13 new threshold determination in full compliance with the environmental
14 checklist requirements set forth in WAC 197-10-310, 320, 330, 360 and
15 365.

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18 NAT W. WASHINGTON
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